

TRIAL COURT OF THE COMMONWEALTH
DISTRICT COURT DEPARTMENT

Standing Order No. 1-08

**PETITIONS FOR JUDICIAL REVIEW
OF LICENSE SUSPENSION FOR CHEMICAL TEST REFUSAL**

(Applicable to All Divisions)

1. **Applicability.** This Order governs the orderly processing of petitions pursuant to G.L. c. 90, § 24(1)(g), first paragraph, for judicial review of a decision of the Registrar of Motor Vehicles upholding the suspension of a motorist's license, permit or right to operate a motor vehicle based upon an alleged refusal to submit to a chemical test or analysis of the motorist's breath or blood at the time of arrest for operating a motor vehicle while under the influence of intoxicating liquor. Such petitions shall be filed and determined in accordance with the following procedures.

2. **Filing of petition.** Such petitions for judicial review shall be timely filed in the appropriate court on the form provided therefor, along with the filing fee and surcharge required by G.L. c. 262, §§ 2 and 4C, unless waived pursuant to G.L. c. 261, §§ 27A-27G. Such forms shall be available in each clerk-magistrate's office and on the District Court's internet website. Such petitions shall be docketed as a separate civil case, and not as part of the underlying criminal case. The clerk-magistrate shall immediately send a copy of any such petition to the Suspension Department of the Registry of Motor Vehicles by facsimile transmission.

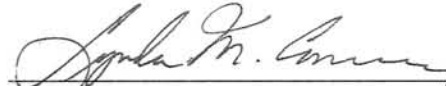
3. **Scheduling.** The clerk-magistrate shall schedule such petition for hearing at least 15 days from the filing of the petition. As required by G.L. c. 90, § 24(1)(g), the hearing shall be scheduled as soon as possible thereafter and not more than 30 days from the filing of the petition, unless the petitioner consents to a later date. No pre-hearing motion or memorandum shall be required, unless specifically ordered by the Court. The petitioner may waive oral argument and submit on written argument, or without argument, by so notifying the clerk-magistrate in writing prior to the scheduled hearing date.

4. **Filing of RMV record.** Within 15 days after receiving a copy of the petition by facsimile transmission, the Registry of Motor Vehicles shall, by way of appearance and answer, file with the clerk-magistrate a copy of the entire record established at the hearing before the Registrar or the Registrar's designee, certified in accordance with G.L. c. 233, § 76 as a true and complete copy of such record. The Registry shall simultaneously serve a copy of such record upon the petitioner by mail to the petitioner's current mailing address as established pursuant to G.L. c. 90, § 26A. The Registry shall not be required to file an appearance of counsel nor appear at the hearing, but if the Registry chooses to so appear by counsel it shall give written notice of such intent to the court and the petitioner when filing such record.

5. **Hearing.** Since § 24(1)(g) limits the Court's review to the record that was established at the Registry hearing, the court's hearing shall be limited to oral argument concerning such record, and no additional testimony or other evidence shall be presented.

6. **Decision.** Pursuant to G.L. c. 90, § 24(1)(g), the Court may reverse the Registrar's decision if the Registry exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record. The Court's determination shall be recorded in the appropriate section of the petition form, and the clerk-magistrate shall then provide the petitioner with a copy of that determination and send a copy to the Registry by facsimile transmission.

The Court's decision is not appealable to the Appellate Division. *Simon v. Registry of Motor Vehs.*, 1995 Mass. App. Div. 129 (N. Dist.)



Lynda M. Connolly
Chief Justice of the District Court

Promulgated: February 7, 2008
Effective: April 1, 2008

OPERATOR'S PETITION FOR COURT REVIEW OF RMV LICENSE SUSPENSION FOR CHEMICAL TEST REFUSAL		CIVIL DOCKET NO. <i>(for court use only)</i>	Trial Court of Massachusetts District Court Department
This petition for review may be filed in the appropriate District Court division only after the operator has appeared at the RMV for a license suspension hearing and the RMV has issued a decision. It must be filed within 30 days after issuance of the Registrar's final determination (G.L. c.90, § 24[1][g]), along with a filing fee of \$195 (G.L. c.262, §§ 2, 4C) unless waived for indigency (G.L. c.261, §§ 27A-29). The statute requires that the Court's review be limited to "the record established at the hearing before the registrar" (§ 24[1][g]) and therefore the operator may not introduce additional evidence before the Court.			
OPERATOR'S NAME		DATE OF BIRTH	
LICENSE NO.	STATE ISSUING LICENSE	DATE OF ARREST	
POLICE DEPT.	DATE OF RMV HEARING	DATE OF RMV DECISION	
Pursuant to G.L. c. 90, § 24(1)(g), I request court review of the decision of the Registrar of Motor Vehicles upholding the suspension of my license, permit or right to operate a motor vehicle under G.L. c. 90, § 24(1)(f)(1) based on my alleged refusal to submit to a chemical test or analysis of my breath or blood at the time of my arrest for operating a motor vehicle while under the influence of intoxicating liquor.			
DATE	SIGNATURE OF OPERATOR X		
FOR COURT CLERK'S USE ONLY			
This proceeding is civil in nature and is not part of the underlying criminal OUI case. Please review that the petitioner has provided all the information required above and then complete this portion of this form. Fax a photocopy of this form immediately to the Registry of Motor Vehicles Suspension Department at (617) 351-9003 . By way of appearance and answer, the RMV will forward copies of the RMV hearing record to the court and to the operator within 15 days. A judge must then review this petition "as soon as possible" and no later than 30 days after the petition is filed (G.L. c.90 §24[1][g]). RMV questions may be directed to (617) 351-9947.			
DATE & TIME OF SCHEDULED COURT REVIEW <i>(within 30 days from filing of petition)</i>			
COURT NAME & ADDRESS	COURT EMPLOYEE'S NAME	COURT EMPLOYEE'S PHONE NO. & EXTENSION	
	DATE FAXED TO RMV <i>(keep FAX confirmation in file)</i>	CLERK'S OFFICE FAX NO.	
DECISION OF THE COURT <i>(To be completed by Judge after court review)</i>			
This Court's review is limited to "the record established at the hearing before the registrar" (G.L. c.90, §24[1][g]). The Registrar has relied on the submission of that hearing record, including the hearing officer's decision, for its appearance and answer in this matter. After review of that hearing record, I find as follows:			
YES	NO		
<input type="checkbox"/>	<input type="checkbox"/>	The Registry exceeded its constitutional or statutory authority. <i>(If yes, see specific findings below.)</i>	
<input type="checkbox"/>	<input type="checkbox"/>	The Registry made an erroneous interpretation of the law. <i>(If yes, see specific findings below.)</i>	
<input type="checkbox"/>	<input type="checkbox"/>	The Registry acted in an arbitrary and capricious manner. <i>(If yes, see specific findings below.)</i>	
<input type="checkbox"/>	<input type="checkbox"/>	The Registry made a determination which is unsupported by the evidence in the record. <i>(If yes, see specific findings below.)</i>	
SPECIFIC FINDINGS:			
Accordingly, it is ORDERED that judgment shall enter: <input type="checkbox"/> AFFIRMING <input type="checkbox"/> REVERSING the Registrar's determination.			
<input type="checkbox"/> DISMISSING the petition for review because it was not timely filed.			
<input type="checkbox"/> DISMISSING the petition for review because the petitioner failed to appear, the Registry's hearing record serving as its appearance and answer.			
DATE	JUDGE'S SIGNATURE X	JUDGE'S PRINTED NAME	